IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2118 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI RAMCHARAN BATHAM

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2118 of 2002

MS BANNA S DUTTA with

MR ANIL S DAVE for Petitioner No. 1

MR SAMEER DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/03/2002

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu, who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by order dated 25/10/2001 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the two criminal cases registered against the detenu under the Prohibition Act. The learned advocate for the petitioner has further submitted that on the date of passing detention order, the petitioner was in judicial custody, and this aspect would have been considered by the detaining authority while passing the detention order. In this connection, he has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

4. It appears that on the date of passing the detention order, the detenu was in judicial custody, hence in view of the above judgement rendered in the case of Amritlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 25/10/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Mahendrabhai Ramcharan Batham is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to

costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik